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OFFICE OF PETITIONS

In re Patent No. 6,627,610
Jeffrey Glenn
Issue Date: September 30, 2003
Application No. 09/687,267
Filed: October 13, 2000
Attorney Docket No. 240042052403

: DECISION ON
: PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT
: TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF DECISION RE: PATENT TERM ADJUSTMENT", filed July 21, 2006. Patentee requests that the patent term adjustment indicated on the patent be corrected from zero (0) days to eighteen (18) days.

The petition is DISMISSED.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of zero (0) days.

On September 10, 2002, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date was one (1) day. Patentees filed an application for patent term adjustment on October 8, 2002, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance was ninety-seven (97) days. On September 30, 2003, the application issued into patent no. 6,627,610 with a patent term adjustment of forty-eight (48) days. The Office mailed a decision on June 21, 2006, indicating that correct patent term adjustment was zero (0) days.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of one hundred sixty-seven (167) days pursuant to 35 U.S.C. 154(b)(1)(A)(iv) and 37 CFR 1.703(a)(6) and ninety-seven (97) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 CFR 1.703(a)(2), reduced by Applicants' delays of ninety-six (96) and six (6) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 CFR 1.704(b), and one hundred fourteen (114) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 CFR 1.704(c)(10).

In his application for patent term adjustment filed October 8, 2002, Applicant argued that he should not have been assessed ninety-six (96) days of delay for filing an amendment on February 5, 2002. In the decision mailed June 21, 2006, the Office agreed with Applicant, noting that the Office originally mailed a final Office action on August 1, 2001. However, the Office then mailed a new Office action, restarting the period for reply, on December 5, 2001. As applicant's amendment was filed within three months of this new Office action, no applicant delay should have been assessed.

However, the decision pointed out that applicant's amendment failed to place the application in condition for allowance. It was not until June 13, 2002 that applicant filed a proper reply to the final Office action in the form of a Request for Continued Examination (the RCE included a Certificate of Mailing dated June 5, 2002). Accordingly, the decision explained that applicant should have been assessed one hundred (100) days of applicant delay pursuant to 37 C.F.R. § 1.704(b). Moreover, in view of the RCE filed June 13, 2002, the Notice of Allowance mailed on September 10, 2002 was timely mailed by the Office within four months. Accordingly, the Office should not have been assessed ninety-seven (97) days for the mailing of the Notice of Allowance, but rather zero (0) days.

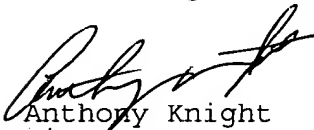
With the instant request for reconsideration, Petitioner argues that he should not have been assessed one hundred (100) days of applicant delay for filing the RCE on June 13, 2002. Petitioner asserts that he worked diligently to conclude examination of the examination, as witnessed by the fact that he filed his first response to the December 5, 2001 final Office action on February 5, 2002, as well as subsequently conducted telephonic interviews with the Examiner, as well as received an Advisory Action from the Examiner on March 4, 2002.

Petitioner's arguments have been considered, but are not deemed to be persuasive. At issue under 37 CFR 1.704(b) is whether Applicant filed a proper reply to the December 5, 2001 final Office action. The record does not disclose that a proper reply was filed until the RCE on June 13, 2002. The Advisory Action mailed March 4, 2002 did not reset the period for Applicants to respond - it was not a 35 USC § 132 Office action.

In view thereof, the correct determination of PTA is zero (0) days (167 days of PTO delay, reduced by 220 (6+114+100) days of applicant delay).

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. § 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by zero (0) days, subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.


Anthony Knight
Director
Office of Petitions

Enc: draft certificate of correction

UNITED STATES PATENT AND TRADEMARK OFFICE
DRAFT CERTIFICATE OF CORRECTION

PATENT : 6,627,610 B1

DATED : September 30, 2003

INVENTOR(S) : Glenn

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 48 days.

Delete the phrase "by 48 days" and insert – by 0 days--